

**Nursing and Midwifery Council
Fitness to Practise Committee**

Substantive Hearing

Monday, 23 November 2020 – Wednesday, 25 November 2020

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Friday, 27 November 2020 – Tuesday, 1 December 2020

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Thursday, 3 December 2020

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Monday, 11 January 2021 – Wednesday, 13 January 2021

Virtual Hearing

Name of registrant:	Wendi Anne Williams
NMC PIN:	87G0782E
Part(s) of the register:	Registered Nurse Mental Health – October 1989
Area of Registered Address:	England
Type of case:	Misconduct
Panel members:	Barbara Stuart (Chair, Lay member) Carol Porteous (Registrant member) Jocelyn Griffith (Lay member)
Legal Assessor:	Nigel Ingram
Panel Secretary:	Philip Austin (Days 1 – 6) Melissa McLean (Day 7) Xenia Menzl (Days 8 – 10)
Nursing and Midwifery Council:	Represented by Ruth Alabaster, Case Presenter
Miss Williams:	Not present and not represented in absence
Facts proved:	All charges
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Striking-off order

Interim order: Interim suspension order, 18 months

Decision and reasons on service of Notice of Hearing

At the start of this hearing, the panel noted that Miss Williams was not in attendance, nor was she represented in her absence.

The panel was informed that notice of this hearing was sent by email to the address that the Nursing and Midwifery Council (“NMC”) had for Miss Williams on the WISER system on 20 October 2020. The panel noted that the emergency statutory instrument in place allows for electronic service of the notice of hearing to be deemed reasonable in the current circumstances, involving COVID-19.

Ms Alabaster, on behalf of the NMC, submitted that the service by email had complied with the requirements of Rules 11 and 34 of the ‘Nursing and Midwifery Council (Fitness to Practise) Rules 2004’, as amended (“the Rules”).

The panel accepted the advice of the legal assessor.

The panel took into account that the notice of hearing provided details of the time, date and venue of the hearing and, amongst other things, information about Miss Williams’ right to attend, be represented and call evidence, as well as the panel’s power to proceed in her absence. The panel noted that due to the current circumstances relating to COVID-19, this hearing would take place remotely for practical reasons and to avoid unnecessary travel. Miss Williams had been provided with the details relating to this virtual hearing, including the specific reference number, telephone number and access code, should she wish to participate.

In light of the information available, the panel was satisfied that Miss Williams had been served with the notice of hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Miss Williams

The panel next considered whether it should proceed in the absence of Miss Williams. It had regard to Rule 21 (2) which states:

- (2) Where the registrant fails to attend and is not represented at the hearing, the Committee—
 - (a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;
 - (b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or
 - (c) may adjourn the hearing and issue directions.

Ms Alabaster referred the panel to the proceeding in absence bundle which contained a vast amount of email and telephone correspondence between the NMC case officer and Miss Williams. She took the panel through the detailed background of this case.

Ms Alabaster submitted that the NMC had asked Miss Williams to provide the dates to avoid between the months of September 2020 and December 2020 before listing this hearing. Miss Williams had responded to the NMC case officer on 12 August 2020, after receiving a follow-up email, stating “...*December would be the best month for me, as I hope to be back to work very soon and Im hopeful of getting a permanent address in the next few months...*”[sic]. The NMC case officer responded on the same day to Miss Williams, stating in an email “...*We may not necessarily be able to schedule this case for a hearing in December. For this reason, if there are any specific dates you know you would be unavailable between September and November, please inform me. We’ll then be able to take into consideration these months, when scheduling the hearing*”. Miss Williams then

responded to this email on 14 August 2020 stating “*Unfortunately I can’t confirm any availability for the months of September, October or November, due to me starting new employment and moving into a new home...*”. The NMC case officer then replied to Miss Williams on 14 August 2020 stating “*I appreciate your circumstances are changing, whether that’s employment or moving homes. However, it may be likely that your hearing is scheduled any dates between September – December. We’re considering availability for all those attending, when we list the hearing. I’ll contact you to provide the hearing dates, when the hearing is listed*”. Miss Williams replied to this email on 15 August 2020 stating “*...As requested in your previous email I’ve advised you of my availability in the months from September to December. I hope I will not be penalised for having no availability during the months of September to through to the 1st of December, I can only hope I am treated fairly by the NMC...*”[sic].

In the lead up to the substantive hearing, Ms Alabaster invited the panel to specifically take account of the email dated 17 November 2020, in which Miss Williams had responded to the NMC’s offer of a case conference stating “*I work every Tuesday and Wednesday Friday and Sunday, so I’m not sure why a meeting has been scheduled for tomorrow, I’m not sure if I’m not explaining this clearly or not, but Im sorry I can’t take any further time of work as I am on the verge of losing my job as it is. Sorry for any inconvenience caused.*”[sic].

Ms Alabaster submitted that Miss Williams’ also replied to the notice of hearing directly in an email that was sent on the first day of this hearing, namely, 23 November 2020, in which she states:

“I wish to send my sincere apologies to you and the panel that I am unable to attend the hearing albeit virtually on Monday, Tuesday and Wednesday as I am working on these days, I’m currently working on a zero contract and as I haven’t been working for the company long I have yet to accumulate any annual leave entitlement.”

Unfortunately, due to the added pressure of the current pandemic I am I'm not in a financial position to take unpaid leave, this is why I stressed a few months ago when you asked my availability that October and November were not good months for me. I have also been advised by my employer that if I took unpaid leave at this time they may have to terminate my contract, which would add a further financial burden to myself and impact on my ability to remain in my current accommodation.

I am very sorry this has led to me only being available later this week, I'm am sorry for any inconvenience caused, to you and the Panel, and to all the witnesses involved in this FTP tribunal.

If it's possible maybe we can test the link on Thursday to check if we have connection ok.

I would again like to express my sincere apologies for any inconvenience caused to you and the panel."[sic].

Ms Alabaster submitted that the panel should consider balancing the NMC's statutory function; the overarching objective of public protection, alongside Miss Williams' right to a fair hearing in deciding whether to proceed in her absence today.

Ms Alabaster submitted that there has to be some question as to whether Miss Williams is realistically intending to participate in this hearing. She submitted that whilst Miss Williams does engage with the NMC, the panel should take account of the behaviour that she has exhibited in her correspondence with the NMC.

Furthermore, Ms Alabaster submitted that attempts have been made to contact Miss Williams this morning on three separate telephone numbers, all of which were all unsuccessful in soliciting a response. Ms Alabaster submitted that at some point during the lifespan of this case, Miss Williams had also previously requested to be removed from the NMC register.

Ms Alabaster submitted that as far as the NMC is concerned, now is the time for a panel to commit to starting this hearing, noting the substantial advance notice of the hearing dates that was provided to Miss Williams, which was much longer than the statutory 28 day notice period.

Ms Alabaster informed the panel that a hearing had previously been listed in December 2019, but it was adjourned on that occasion due to Miss Williams' health. She therefore submitted that Miss Williams is aware of how to go about requesting an adjournment of these proceedings, but she has not appear to have done this in her email dated 23 November 2020. Nonetheless, Ms Alabaster invited the panel to consider whether Miss Williams' email was akin to her requesting an adjournment of this hearing, or whether it was an acceptance that the panel would proceed in her absence as she was unable to attend until much later on in the week.

Ms Alabaster submitted that if the panel did decide to proceed in Miss Williams' absence, it could have regard to the written representations that she had provided in response to the allegations made against her by the NMC. She acknowledged that whilst this is not as good as having Miss Williams attend this substantive hearing, it does give some information on her challenging the NMC's case, specifically, things she would have put to the witnesses had she attended. Ms Alabaster therefore submitted that some fairness to Miss Williams can be achieved as her case can still be put to the NMC witnesses despite her non-attendance, which lessens the prejudice caused to her.

Ms Alabaster referred the panel to the case of *General Medical Council v Adeogba [2016] EWCA Civ 162* and submitted that there is no good reason for the panel to adjourn this matter today. She submitted that the NMC has warned five witnesses to give oral evidence to this panel and adjourning today might have an adverse effect on their recollection of the events, which date back to 2018. Ms Alabaster submitted that the public interest elements of this case suggest that this matter should be dealt with expeditiously.

Ms Alabaster invited the panel to proceed in the absence of Miss Williams on the basis that she has voluntarily absented herself.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones (Anthony William) (No.2) [2002] UKHL 5*.

The panel has decided to proceed in the absence of Miss Williams. In reaching this decision, the panel has considered the submissions of Ms Alabster and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *GMC v Adeogba* whilst having regard to the overall interests of justice and fairness to all parties. It noted that:

- Miss Williams had been given significant notice of this substantive hearing;
- The NMC had asked Miss Williams to confirm specific dates that she would be unavailable between September and December 2020, but Miss Williams did not do this;
- The NMC had scheduled a case conference with her on Thursday, 19 November 2020, but Miss Williams only informed the NMC that she would not be able to attend that the day before;
- The NMC has attempted to engage Miss Williams in these proceedings by communicating with her via email in the build up to this hearing;
- Miss Williams had informed the NMC one working day before the hearing was due to start that she is only available on the day that the panel are not due to be sitting this week;
- A substantive hearing had previously been listed in 2019, but was adjourned on that occasion at the request of Miss Williams;

- Miss Williams is aware of how to request an adjournment in these proceedings, but has not raised a specific objection to the panel proceeding in her absence today;
- Miss Williams has provided no good reason for the panel not to proceed at the current time;
- The NMC had attempted to call Miss Williams on three different telephone numbers on the morning of the substantive hearing;
- There is no reason to suppose that adjourning would secure Miss Williams' attendance at some future date;
- Miss Williams has provided written representations in response to the NMC's investigation;
- Five witnesses have been warned to give oral evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the patients or those who need their professional services;
- The charges are serious and relate to events that occurred as far back as 2018;
- Further delay may have an adverse effect on the ability of witnesses to accurately recall events; and
- There is a strong public interest in the expeditious disposal of the case, with notable public protection concerns.

There is some disadvantage to Miss Williams in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered address, she will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give oral evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Miss Williams' decisions to absent herself from the hearing, waive her

rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Miss Williams. The panel will draw no adverse inference from Miss Williams' absence in its findings of fact.

The panel decided that an email should be sent to Miss Williams at this point, confirming that it has decided to proceed in her absence but, should she be available in the morning on Friday, 27 November 2020, it would be in a position to hear her evidence at this stage.

Details of charge (before amendments)

That you, a registered nurse:

1. *Whilst employed at 'Olive Tree House', on 3 June 2018 administered insulin to Resident 1 otherwise than in accordance with his prescription.*
2. *Following the actions set out in Charge 1 above you did not:*
 - a) *Record/report the error; and/or*
 - b) *Ensure that Resident 1 was reassured that his health had not been affected by the error.*
3. *Whilst employed at 'Olive Tree House', on 11 June 2018 failed to give prescribed medication to the Residents listed in Schedule 1.*

4. *On 11 June 2018 you signed MAR Charts for Residents listed in Schedule 1 to indicate that you had administered medication when you had not done so.*
5. *Your actions at Charge 4 above were dishonest as you deliberately created a medication administration record you knew to be false because you knew you had not given the prescribed medication.*
6. *Did not declare the following during the recruitment process for your role at 'Olive Tree House':*
 - a) *on your CV, that you had been employed at 'Kingfisher House';*

and/or

b) in interview, that there were concerns raised about your professional performance at Kingfisher House that meant you had not yet successfully passed your probation.
7. *Your conduct at Charge 6a and/or Charge 6b above demonstrated a lack of integrity on your behalf as you knew that disclosing the details of your employment at Kingfisher House could reflect negatively on your application for employment at Olive Tree House.*

AND in light of the above, your fitness to practise is impaired by reason of your misconduct.

SCHEDULE 1

- a) *Memantine Tablets for Resident 2*

- b) *Eye drops for Resident 3*
- c) *Medication for Resident 4*
- d) *Ibuprofen gel and/or docusate sodium for Resident 5*

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Alabaster to amend the charges against Miss Williams. She asked the panel to correct a technical imperfection to Schedule 1 to better reflect the evidence presented.

Ms Alabaster submitted that the evidence suggests that the allegation involving docusate sodium should be attributed to Resident 2, and not Resident 5, as currently stated in Schedule 1. She submitted that it would not be appropriate for the charges to fail on a technicality, when it is clear that this mistake can be corrected, and can be done so without significant injustice caused to Miss Williams.

Ms Alabaster submitted that the amendment can be done without prejudice, as it does not impact Miss Williams' overall position. Miss Williams claims to have administered docusate sodium, so it does not matter what resident the charge is applied to in any event.

Ms Alabaster invited the panel to move the words 'and/or docusate sodium' from d) to b) in Schedule 1, as set out below:

SCHEDULE 1

- a) *Memantine Tablets for Resident 2*
- b) *Eye drops and/or docusate sodium for Resident 3*
- c) *Medication for Resident 4*
- d) *Ibuprofen gel for Resident 5*

The panel accepted the advice of the legal assessor that Rule 28 of the Rules states:

28.— (1) At any stage before making its findings of fact, in accordance with rule 24(5) or (11), the Investigating Committee (where the allegation relates to a fraudulent or incorrect entry in the register) or the Fitness to Practise Committee, may amend—

(a) the charge set out in the notice of hearing; or

(b) the facts set out in the charge, on which the allegation is based,

unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice.

(2) Before making any amendment under paragraph (1), the Committee shall consider any representations from the parties on this issue.

The panel was of the view that such an amendment, as applied for, was in the interest of justice. It considered the proposed amendment to be uncontentious and noted that it did not change the nature of the charges that Miss Williams faces. Miss Williams' position is that she administered docusate sodium to a resident and, whilst she does not specifically state which resident this relates to, the panel considered her defence would be unlikely to change by correcting the error contained in Schedule 1.

Therefore, the panel was satisfied that there would be no prejudice to Miss Williams, and no injustice would be caused to either party by the proposed amendment being allowed. It decided that it would be appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

Details of charge (as amended)

That you, a registered nurse:

1. *Whilst employed at 'Olive Tree House', on 3 June 2018 administered insulin to Resident 1 otherwise than in accordance with his prescription.*
2. *Following the actions set out in Charge 1 above you did not:*
 - a) *Record/report the error; and/or*
 - b) *Ensure that Resident 1 was reassured that his health had not been affected by the error.*
3. *Whilst employed at 'Olive Tree House', on 11 June 2018 failed to give prescribed medication to the Residents listed in Schedule 1.*
4. *On 11 June 2018 you signed MAR Charts for Residents listed in Schedule 1 to indicate that you had administered medication when you had not done so.*
5. *Your actions at Charge 4 above were dishonest as you deliberately created a medication administration record you knew to be false because you knew you had not given the prescribed medication.*
6. *Did not declare the following during the recruitment process for your role at 'Olive Tree House':*
 - a) *on your CV, that you had been employed at 'Kingfisher House';*

and/or

b) in interview, that there were concerns raised about your professional performance at Kingfisher House that meant you had not yet successfully passed your probation.

7. Your conduct at Charge 6a and/or Charge 6b above demonstrated a lack of integrity on your behalf as you knew that disclosing the details of your employment at Kingfisher House could reflect negatively on your application for employment at Olive Tree House.

AND in light of the above, your fitness to practise is impaired by reason of your misconduct.

SCHEDULE 1

- a) Memantine Tablets for Resident 2*
- b) Eye drops and/or docusate sodium for Resident 3*
- c) Medication for Resident 4*
- d) Ibuprofen gel for Resident 5*

Decision and reasons on application for hearing to be held in private

Ms Alabaster made a request that parts of the hearing be held in private on the basis that proper exploration of this case may involve reference to the health of Miss Williams and other sensitive personal matters. She submitted that any public interest in these parts of the case being aired in public session is outweighed by the need to protect her privacy in this respect. This application was made pursuant to Rule 19 of the NMC (Fitness to Practise) Rules 2004, as amended (“the Rules”).

The legal assessor reminded the panel that while Rule 19 (1) provides, as a starting point, that hearings shall be conducted in public, Rule 19 (3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Rule 19 states:

- 19.—(1) Subject to paragraphs (2) and (3) below, hearings shall be conducted in public.
- (2) Subject to paragraph (2A), a hearing before the Fitness to Practise Committee which relates solely to an allegation concerning the registrant's physical or mental health must be conducted in private.
- (2A) All or part of the hearing referred to in paragraph (2) may be held in public where the Fitness to Practise Committee—
- (a) having given the parties, and any third party whom the Committee considers it appropriate to hear, an opportunity to make representations; and
 - (b) having obtained the advice of the legal assessor, is satisfied that the public interest or the interests of any third party outweigh the need to protect the privacy or confidentiality of the registrant.
- (3) Hearings other than those referred to in paragraph (2) above may be held, wholly or partly, in private if the Committee is satisfied—
- (a) having given the parties, and any third party from whom the Committee considers it appropriate to hear, an opportunity to make representations; and
 - (b) having obtained the advice of the legal assessor, that this is justified (and outweighs any prejudice) by the interests of any party or of any third party (including a complainant, witness or patient) or by the public interest.

- (4) In this rule, “in private” means conducted in the presence of every party and any person representing a party, but otherwise excluding the public.

Having heard that there may be reference to Miss Williams’ health and other sensitive personal matters, the panel determined to hold such parts of the hearing in private. The panel determined to rule on whether or not to go into private session in connection with these matters as and when such issues are raised.

NMC Opening

The NMC received a referral on 15 June 2018 from Olive Tree House (“Olive Tree”), part of Grove Care, in relation to Miss Williams.

It is alleged that during the recruitment process for her role at Olive Tree, Miss Williams did not declare that she had been employed at Kingfisher, part of the Barchester Health Care Group and/or that she was unsuccessful in passing her probation period of employment there.

Miss Williams was reported to be frequently absent from work through sickness at Kingfisher and she did not give sufficient notice of her absence, which impacted upon the staffing levels of the healthcare team. On 29 March 2018, Miss Williams met with Ms 3, Home Manager at Kingfisher, for a review of her probation. Supportive measures were put in place in the hope that Miss Williams’ employment could be maintained.

Miss Williams’ attendance failed to improve and on 27 April 2018, the decision was taken to terminate her employment during her extended period of probation as managing her level of absence was not sustainable.

Miss Williams applied for a nursing role at Olive Tree, successfully passed her interview and commenced employment on 12 May 2018. During the interview however, Miss Williams was allegedly asked about her ‘*sabbatical*’ from employment, which was

something she had included on her Curriculum Vitae (“CV”). Whilst Miss Williams had allegedly informed Mr 1, Nurse Deputy Manager, and Ms 4, Care Manager at Olive Tree, that she had previously worked for Barchester Health Care Group, Miss Williams did not specifically mention that she had worked at Kingfisher very recently, nor did she mention that her employment had been terminated due to unsuccessful completion of her probationary period.

It is alleged that Miss Williams’ conduct above demonstrates a lack of integrity on her part, as she knew that disclosing her failed employment at Kingfisher could reflect negatively on her application for employment at Olive Tree. It is alleged that Miss Williams knew her professional performance at Kingfisher had been deemed to be poor, and by not mentioning this, she had prevented Olive Tree from obtaining the most up to date information about her nursing practice in an attempt to increase her chances of being offered employment by them.

It is alleged that whilst employed at Olive Tree, Miss Williams administered insulin to Resident 1 otherwise than in accordance with his prescription on 3 June 2018. Resident 1 was an insulin dependent diabetic, who was mentally fit but not physically well. His MAR chart states he was prescribed a dose of insulin ‘*each morning pre peg feed*’. It is alleged that in the column of 3 June 2018, there is a signature pertaining to ‘*WW*’, who is Miss Williams.

Resident 1 communicated to Mr 1 that Miss Williams had administered an extra dose of insulin to him on 3 June 2018. He reported the same concern to Ms 2, a registered nurse, but with additional detail, as he allegedly said that following an issue with the administration of his morning insulin dose via an insulin pen, Miss Williams had given him an extra dose of insulin around lunchtime.

An extra dose of insulin at lunchtime was not indicated on the prescription and it is therefore alleged that this was otherwise than in accordance with Resident 1’s prescribed medication.

It is also alleged that following the above incident, Miss Williams did not record/report the error and/or ensure that Resident 1 was reassured that his health had not been affected by the error.

Miss Williams could have reported any issues with Resident 1's medication in his Care Log, however, there is no entry made in relation to the alleged incident. Furthermore, Miss Williams allegedly had the opportunity at handover to inform Ms 2 that she had administered an additional four units of insulin to Resident 1 at lunchtime, but did not do so.

Ms 2 reports that once on shift, she noticed that Resident 1 seemed very anxious about what had happened and was ringing the bell to call for help. He raised his concerns with her about whether he had received an adequate amount of medication and he wrote on his communication whiteboard that he was '*concerned*' about this.

It is alleged that from this behaviour, Miss Williams did not ensure that Resident 1 was reassured that his health had not been adversely affected by the error.

It is further alleged that on 11 June 2018, Miss Williams failed to give medication to a number of residents, but she had signed their MAR charts to indicate that she had administered this medication when she had not done so.

Mr 1 carried out an informal audit on the morning medication round on 12 June 2018. Miss Williams had been on shift on 11 June 2018, and had been responsible for the administration of medication in the morning round.

There had allegedly been a '*changeover of medication*' on 10 June 2018, meaning that all the racks were emptied of medication and the excess stock was destroyed. However, during his informal audit, Mr 1 allegedly found several medications, including those for Resident 2, 3 and 5, which were not open. This led him to believe that this medication could not have been given to residents on 11 June 2018 by Miss Williams. It is alleged

that the '*changeover of medication*' occurs monthly on a Sunday, and that medications are not generally carried forward, apart from paracetamol occasionally. No medication for the residents in question were recorded as having been destroyed on 10 June 2018 in the medication log.

It is alleged that medications for the changeover arrive in the days leading up to it (on this occasion 7 June 2018), to ensure a smooth transition in changing over the medication. The new medication would then be used on Monday, 11 June 2018, on the morning medication round.

Mr 1 took photographs during his audit of the unopened medication belonging to the residents involved.

Specifically in relation to Resident 4, Mr 1 allegedly noticed on his MAR chart that Miss Williams had not recorded anything so he was not satisfied that this had been administered. He describes seeing '*dots*' in the MAR Chart which meant he was unsure whether the medication had been administered, although he proffers fairly that it may have been administered.

Mr 1 then checked the relevant MAR charts for Residents 2, 3 and 5, and noticed that the medications had been signed as having been administered by Miss Williams.

It is alleged that Miss Williams' actions were dishonest in this regard as she deliberately created a medication administration record she knew to be false because she knew she had not given the prescribed medication.

Decision and reasons on application to admit hearsay evidence

Before hearing from the NMC witnesses, Ms Alabaster invited the panel to admit the evidence of Resident 1.

Ms Alabaster informed the panel that as Resident 1 has now passed away, he is not able to attend to give oral evidence to the panel at this hearing. She invited the panel to have regard to Resident 1's death certificate to confirm as such.

However, Ms Alabaster submitted that Resident 1's account was provided to Mr 1 and Ms 2 who have recounted their interactions with Resident 1 in their NMC witness statements. Furthermore, she submitted that Ms 2 had also made a contemporaneous note which was completed shortly after her encounter with Resident 1.

Ms Alabaster submitted that although the evidence that is being presented in relation to charges 1 and 2 is hearsay, as it is not coming from Resident 1 directly, the NMC are seeking to rely on it as true. She submitted that it is clearly relevant and essential, and it is the only evidence that has been obtained in respect of these matters.

Ms Alabaster submitted that it is fair to admit Resident 1's evidence due to the particular circumstances in this case. She submitted that charges 1 and 2 should not fail outright because Resident 1 is deceased, and therefore unable to give oral evidence to the panel.

Nonetheless, Ms Alabaster submitted that the panel can make allowances for the fact that Resident 1 will not be attending to give oral evidence. She submitted that the panel can make necessary limitations and can test the veracity of Mr 1's and Ms 2's evidence instead, both of whom had Resident 1 raise concerns to them.

Ms Alabaster submitted that Miss Williams denies that she gave a second dose of insulin to Resident 1, and his evidence directly contradicts this assertion.

Ms Alabaster submitted that it is right that this information is admitted into evidence at this time. The panel can make a judgment on whether or not to believe the account after hearing the evidence of the NMC witnesses.

The panel heard and accepted the advice of the legal assessor. This included that Rule 31 provides that, in so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel noted that Resident 1's evidence is clearly relevant to charges 1 and 2. It also noted that Resident 1 has not provided a witness statement for the purposes of these proceedings, nor is he in a position to be able to give oral evidence to the panel as he is deceased. However, the panel determined that this should not mean that Resident 1's evidence is inadmissible, as it was aware that it has a wide discretion in admitting evidence, as identified in Rule 31.

The panel acknowledged the NMC's submission that Mr 1 and Ms 2 were attending to give oral evidence on the account that Resident 1 had provided to them. It was satisfied that it would be able to test and challenge their evidence in the absence of being able to assess Resident 1's evidence directly.

The panel agreed that it would not be appropriate to let charges 1 and 2 fail simply because Resident 1 has passed away. It determined that it would be in the public interest to consider these matters fully, as the mischief identified in charges 1 and 2 could relate to a public protection concern if found proved by a panel at the facts stage of these proceedings.

Therefore, in having regard to the above, the panel came to the view that it would be fair to admit Resident 1's evidence. It determined that it would give it the appropriate weight, once it had heard and evaluated all the evidence before it.

Ms Alabaster made another application to adduce an unredacted version of two exhibits provided by Ms 2 into evidence. She submitted that the panel already have this document before them in a redacted format, however, adducing the unredacted version will assist the witness whilst taking her through her evidence.

Ms Alabaster informed the panel that this exhibit can be marked as private, and admitting the unredacted version into evidence will not be controversial or prejudicial to Miss Williams in any way as the panel already have sight of the redacted version.

The panel heard and accepted the advice of the legal assessor.

The panel decided to admit the two unredacted copies of Ms 2's exhibits into evidence, as requested by Ms Alabaster.

The panel considered the evidence to be relevant to the charges Ms 2 was being asked to give evidence on, and noted that this was being done to assist her in identifying which resident the evidence relates to.

In taking this into account, the panel considered there to be no prejudice caused to Miss Williams in admitting these unredacted documents into evidence. The only thing that had been removed in the redacted versions was each resident's name in order to protect their anonymity. There was no other new information for the panel to have regard to.

The panel therefore decided that it was fair to admit these unredacted copies of Ms 2's exhibits into evidence.

Application to recall Mr 1

After hearing from all of the NMC's witnesses, Ms Alabaster invited the panel to recall Mr 1 in accordance with Rule 24 of the Rules.

Ms Alabaster informed the panel that she intends to recall Mr 1 to give oral evidence on a sole point that had been raised by Miss Williams in her written representations that had not been put to him previously. She submitted that this is in Miss Williams' interest, as she states that she had spoken to both Mr 1 and Ms 2 on 12 June 2018, and asked Mr 1 to

find the discarded medication that she had used and then thrown in the bin, but he had refused to do so. Ms Alabaster submitted that contact has been sought with Mr 1, who has given the timeframe of his availability.

The panel heard and accepted the advice of the legal assessor.

The panel considered whether it would be relevant and fair to recall Mr 1.

The panel noted that the application had been made by Ms Alabaster, out of fairness to Miss Williams, as she had matters that she would have put to the NMC witnesses had she been in attendance.

The panel considered the outstanding point to be relevant to the charges. It determined that it would be fair to Miss Williams to have Mr 1 recalled to provide comment on a singular point raised by Miss Williams in her written representations.

The panel also noted that Mr 1's availability had been sought and he was in a position to provide evidence to this panel again via video link at an agreed upon time.

Therefore, the panel decided to allow Mr 1 to be recalled to give further evidence to this panel.

Correspondence with Miss Williams

Miss Williams responded to the decision that the panel had decided to proceed in her absence at this hearing in an email on Tuesday, 24 November 2020 at 23:43 hours. In this email, she stated:

“Thank you for your email sorry for the delay in my reply.

I had no doubt that hearing would go ahead with or without me, I have repeatedly indicated via email that I would be unable to attend a hearing during the month of November due to my employment status, yet the hearing was scheduled during the said period...

It's become very apparent to me that a decision has already been made regarding my case so forgive me for prioritising having employment and a roof over my head over attending the first three days scheduled for the meeting I have always indicated I was never able to attend due to employment commitments in the first place.

If you can accommodate my attendance on Friday that would be nice.”[sic].

In response to the suggestion of her participation at this hearing, the NMC case officer contacted Miss Williams to see if she would be available for a GoToMeeting test on Thursday, 26 November 2020. Miss Williams did not respond to the initial email sent on 23 November 2020, but she did respond to the email on 25 November 2020, stating:

“Would 3pm on Thursday be ok? My number is [PRIVATE], unfortunately I don't answer calls from withheld or private numbers. So if you can give me a rough idea when you will be phoning me that would be great.”[sic].

The NMC case officer then responded to this by saying:

“Thank you for your email.

I will give you a call tomorrow at 15:00 on the number confirmed. The number I'll call you from is my work landline which is [PRIVATE].”

The Panel Secretary also emailed Miss Williams on Wednesday, 25 November 2020 at 13:00 hours, in response to the email she had sent him regarding the panel proceeding in her absence at this hearing. This email stated:

“Thank you for your email which I have passed on to the panel. They have confirmed that they are content to hear from you on Friday – my plan would be to call you at around 09:00am where I will take some time to explain the process to you alongside the case presenter.

The panel will then look to hear from you at around 09:30am. Please let me know if you are agreeable to this.”

The NMC case officer attempted to contact Miss Williams at the agreed upon time of 15:00 hours on Thursday, 26 November 2020. She made ten telephone calls to Miss Williams and also sent her two emails to find out if she would be attending the GoToMeeting test.

Miss Williams replied to the Panel Secretary’s email on Thursday, 26 November 2020 at 22:33 hours stating:

“Can I please ask that your call be delayed to later in the day, unfortunately I’ve had [PRIVATE]. I am very sorry for any inconvenience caused to you and the panel for my request.”[sic].

This was then followed up with an email received from Miss Williams at 08:13 hours on Friday, 27 November 2020:

“Further to my earlier email, again can I please ask for my phone call to be delayed as late as possible as [PRIVATE].

I fully understand you have a timetable for this week and I'm very sorry for my request however I am waiting for news [PRIVATE].

Again I am very sorry for any I inconvenience caused by my request to you and the panel, unfortunately it's been a very stressful week."

Miss Williams had also sent an email to the NMC case officer at 08:13 hours stating:

"Sorry I missed your calls yesterday unfortunately things have been a bit chaotic here.

[PRIVATE]".

The Panel Secretary contacted Miss Williams back at 10:27 hours on Friday, 27 November in relation the email he had been sent that morning. In this email, it was stated:

"Firstly, [PRIVATE].

I have passed your email on to the panel who have made a decision to wait until 11:30am to see if you are able to join us on the meeting link. Can you please respond to this email confirming that you have understood this. I will be calling you at around that time from a withheld number so please ensure that you pick up.

Please note that if you do not provide a further response, the panel are minded to proceed in your absence at midday".

Miss Williams responded to this email at 10:55 hours on the same day, stating:

"I'm still waiting to hear [PRIVATE].

I'm not going to be able to take your call at the stated time, due to the current stressful situation I find myself in.

I can only express my unhappiness at the meeting continuing without my input, if you and the panel feel my request to reschedule my input as unreasonable then I have no control over that.

However under such difficult circumstance, if the panel insist the tribunal can go ahead without me I will have no option but to seek some legal advise at my earliest possible opportunity as I feel this is very unfair, after all, we're suppose to be a caring profession".[sic].

In response to this, the following email was sent by the Panel Secretary at 12:31 hours:

"Again, thank you for your most recent email. Please accept my apologies for my continued contact during what I'm sure is a difficult time for you.

The panel has decided to consider your email as an application to adjourn this hearing. I will contact you at 15:00 hours to let you know their decision.

However, if the panel accedes to your application, the panel have asked me to find out when you will likely be able to give your evidence during this current listing. The hearing is due to run until Tuesday.

Can you please respond and let me know so I can pass this message on".

The panel at this stage, considered whether it was appropriate to adjourn the hearing until Monday, 30 November 2020 to allow Miss Williams to attend to give evidence.

Application to adjourn

The panel invited submissions from Ms Alabaster, on behalf of the NMC, on whether it was appropriate to adjourn until Monday, 30 November 2020 to hear from Miss Williams.

Ms Alabaster submitted that Miss Williams has been engaging and continues to suggest that she wants to participate at this hearing, but the circumstances that have arisen are not allowing for it. She invited the panel to have regard to Rule 32(2) and 32(4) of the Rules in considering this application.

Ms Alabaster submitted that Miss Williams' previous behaviour suggests that she would be unlikely to attend this hearing if the panel were to adjourn until Monday, 30 November 2020. She reminded the panel that an email had been sent by the Panel Secretary on Monday, 23 November 2020, informing Miss Williams that the panel would be willing to hear from her at 09:30am on Friday, 27 November 2020, if it was possible for her to attend. Ms Alabaster submitted that the panel adjourned this hearing on Wednesday, 25 November 2020 having heard from the NMC witnesses, so some time has already been afforded to Miss Williams to solicit her attendance.

Ms Alabaster referred the panel to the attempts made by the NMC case officer to communicate with Miss Williams on Thursday, 26 November 2020, but she did not then respond until outside working hours. Ms Alabaster also referred the panel to the emails from Miss Williams which suggested that she would be available on Friday to give her evidence to the panel, but now she is saying that this is not possible, without giving a new timeframe.

Ms Alabaster submitted that in deciding whether it is fair to adjourn, the panel must consider fairness to both Miss Williams and the NMC. She reminded the panel that the NMC have a statutory objective to protect the public and address the wider public interest concerns, which it is trying to do during the listing of this substantive hearing. Ms Alabaster

submitted that there is a potential injustice on the part of the NMC in not concluding this hearing, by the panel not coming to an overall decision.

Nonetheless, Ms Alabaster submitted that the panel should have regard to the new information provided by Miss Williams, which suggests the time allotted to her is now irrelevant due to unforeseen circumstances. She submitted that it is a matter for the panel as to whether it is fair to adjourn, whether it be until Monday, 30 November 2020, or at all during this listing. Ms Alabaster submitted that the panel should consider whether Miss Williams will be fit to address the panel in light of her alleged difficult personal circumstances.

Ms Alabaster submitted that Miss Williams never seems to provide information relating to when she is or is not available. She invited the panel to consider giving Miss Williams very clear directions for engagement so that she has a clear expectation on how she is going to engage moving forward, should the panel decide to adjourn this hearing until Monday, 30 November 2020, or later. Ms Alabaster submitted that going by previous correspondence, Miss Williams will be at work on Monday, so the panel will be unlikely to hear from her at that point also.

In the NMC's view, Ms Alabaster submitted that multiple attempts have been made on the part of the NMC to solicit Miss Williams' attendance at this hearing, but she has not done so. She submitted that it is in the public interest to proceed with this matter in an expeditious manner.

The panel heard and accepted the advice of the legal assessor.

The panel noted that Miss Williams has responded frequently to emails that have been sent to her, and she continues to reiterate her position that she wants to participate at this hearing. It noted that she has now given a bit more information in explaining the reason for her non-attendance on Friday, 27 November 2020. The panel had no reason to believe that Miss Williams was not telling the truth about her difficult personal circumstances.

In light of the above, the panel considered it to be fair to adjourn the proceedings at this stage to allow Miss Williams the time to address the matters in her personal life. The panel did have regard to Ms Alabaster's submissions, but determined that there was less injustice caused to the NMC in adjourning this hearing, as the panel had already heard the evidence of the NMC's witnesses.

In any event, the panel noted that this substantive hearing is only scheduled until Tuesday, 1 December 2020, and it acknowledged the need to make significant progress in order to hand down any determination during this current listing.

Therefore, the panel asked the Panel Secretary to send a very clear email at 15:27 hours to engage Miss Williams, as set out below:

"The panel has reluctantly agreed to adjourn the hearing until Monday in light of your current circumstances. However, they have asked that you be available at 09:00am for me to assist you in setting you up on the video link or the telephone, whatever method you prefer to use.

At 09:30am, the legal assessor and the NMC case presenter will then join the meeting to have a preliminary chat with you, which may assist you with understanding how the day will progress.

The panel will start the hearing at 10:00am".

Further Correspondence with Miss Williams

In response to the email sent by the Panel Secretary confirming that the hearing had adjourned until 10:00 hours on Monday, 30 November 2020, Miss Williams stated at 15:43 hours:

“As previously indicated In my emails to Shabnam I work Sunday nights and I don’t finish work until 11am, Thats why my requested after 12 midday” .[sic].

Miss Williams then emailed the Panel Secretary on Monday, 30 November 2020 at 08:06 hours stating:

“I’m not sure what the panels plan are for today, If they will take into consideration I have worked during the night or not, I understand they have been very flexible during my case hearing and if they feel it’s not ok for me to participate in a video conference later today then so be it,

I just wanted to say that I will be submitting a statement today no later than 2pm and all I ask is the panel read it and take its contents into consideration” .[sic].

In light of the above email, the panel invited submissions from Ms Alabaster as to whether further time should be afforded to Miss Williams.

Ms Alabaster submitted that it is a matter for the panel as to how they want to proceed.

The panel heard and accepted the advice of the legal assessor.

The panel noted that Miss Williams is now saying that she will provide a written statement for the panel by 14:00 hours, and not that she will be attending to give evidence, as was previously indicated. It noted that Miss Williams had stated that she would be working a night shift at her current employment.

Due to the constant change in position from Miss Williams, the panel was not reassured that it would receive a written statement from her at this time. It considered her to have had the opportunity to prepare a written statement in the build-up to this substantive hearing, as well as during its current listing, which has included a weekend break.

The panel reminded itself that it had adjourned on Friday on the basis of hearing from Miss Williams in person at this hearing, but this now appears not to be the case.

The panel was no longer content to wait for the written statement of Miss Williams. It noted that a significant amount of time had already been lost waiting for her to provide evidence to it, and it decided that further time could not be afforded to her if this panel was to make significant progress in determining the facts of this matter.

The Panel Secretary therefore responded to Miss Williams' email on the same day at 10:20 hours, at the request of the panel. This email stated:

"The panel has now taken account of the email you sent me this morning, along with the email you sent me Friday afternoon.

However, the panel wished me to inform you that it has decided to continue in your absence."

Miss Williams then replied to this email at 11:48 hours stating:

"Thank you for your reply.

I must say I'm very disappointed but not at all surprised at the panel's decision. I was under the impression by the guidelines I would be given the opportunity to give evidence/Speak to the panel at this stage. However this is clearly not the case. I now feel justified in putting my family and employment first during this whole process.

I've had a busy night so I am off to get some rest for a couple of hours, as I am no longer allowed to speak to the panel later today, I will submit a further statement as earlier indicated".[sic].

Miss Williams then emailed the Panel Secretary a written statement at 13:20 hours on Monday, 30 November 2020, whilst the panel were still deliberating on facts.

The panel had sight of the written statement and Ms Alabaster addressed it in public session.

Ms Alabaster informed the panel that Miss Williams' written statement did not largely deviate from what her previous correspondence had stated. She submitted that the salient points were put to the NMC witnesses during their oral evidence, and the panel do not need to take any steps to recall them at this stage. Ms Alabaster invited the panel to take this written statement to be a closing statement of facts from Miss Williams.

The panel heard and accepted the advice of the legal assessor.

The panel considered the content of Miss Williams' written statement. It was of the view that this new piece of evidence contained no material difference to what had previously been advanced by Miss Williams, and it was satisfied that Miss Williams' case had been put to the NMC witnesses by both Ms Alabaster and the panel.

Nonetheless, it decided that it would take account of this written statement, along with the other responses provided by Miss Williams, in determining the facts of this case.

Tuesday, 1 December 2020

The panel invited Ms Alabaster back on to the GoToMeeting link to inform her that it would not be able to hand down a decision on facts during this current listing. It was apparent that this case would be going part-heard, and that the panel would now need to adjourn in any event.

However, the panel indicated that it would be able to resume this hearing on Thursday, 3 December 2020, with the intention of handing down facts on this day, with a further three days lined up in January 2021, should these be required.

Ms Alabaster, on behalf of the NMC, submitted that there are no public protection risks that the panel will need to consider in the interim period between now and Thursday, 3 December 2020. However, further consideration to this matter may be given when the panel hands down its decision on facts.

Therefore, the panel decided to adjourn this hearing until Thursday, 3 December 2020.

The panel asked the Panel Secretary to send the following email to Miss Williams:

“As mentioned previously, this hearing has gone part-heard during the panel’s deliberations on facts.

The panel will hand down its determination on facts on Thursday, 3 December 2020. You are welcome to attend should you wish to do so. Alternatively, this determination will be sent out to you by email on this day once the panel have confirmed its findings.

Should resuming dates be required from this point on, the panel have decided that it is available on 11 January 2020, 12 January 2020 and 13 January 2020 in order to conclude this case. You will be invited to attend on these days for the misconduct and impairment stage of these proceedings and, if reached, the sanction stage.

Thanks again for engaging with me over the past week.”

Resuming Hearing on Thursday 3 December 2020 - Service of Notice of Hearing and Proceeding in Absence

The panel was satisfied that Miss Williams had received Notice of these proceedings and further determined that it was appropriate in all the circumstances to proceed in her absence, bearing in mind it was only handing down its decision on facts.

Decision and reasons on facts

At the start of the resuming hearing on Thursday, 3 December 2020, the panel revisited its determination on the facts of this case.

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case, together with the submissions made by Ms Alabaster, on behalf of the NMC.

The panel has drawn no adverse inference from the non-attendance of Miss Williams.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel heard oral evidence from the following witnesses called on behalf of the NMC who, at the time of the alleged events, were employed in the following roles:

- Mr 1: Nurse Deputy Manager at Olive Tree

- Ms 2: Registered Nurse at Olive Tree
- Ms 3: Home Manager at Kingfisher
- Ms 4: Care Manager at Olive Tree
- Mr 5: Registered Nurse at Olive Tree

The panel first considered the overall credibility and reliability of the witnesses in the order it had heard from them. It made the following conclusions:

The panel found Mr 1 to be an honest, credible, and reliable witness. It considered him to be helpful in clarifying his position in respect of his own evidence, including by answering the questions that were put to him by Ms Alabaster, taken from Miss Williams' written representations. The panel found his oral evidence to be compelling, and it did not consider him to have embellished his evidence in any way. Mr 1 was fair and balanced during his evidence, as he accepted when he was unable to recollect certain events due to the lapse in time. The panel determined that Mr 1 had assisted it to the best of his knowledge and belief.

The panel found Ms 2 to be a clear, credible, and reliable witness. It considered her to have been open and honest in giving her oral evidence, and it had found her overall recollection to have been of a very high level. Ms 2 was able to demonstrate a good understanding of the residents at the Olive Tree, as well as the processes in place there at the time of the events. Whilst the panel considered there to be some minor inconsistencies between Ms 2 and Mr 1's evidence, focusing on the extent of Resident 1's ability to speak, it was of the view that this did not fundamentally impact upon either witnesses' credibility or reliability. It considered Ms 2 to have given a convincing account of what had happened in her view. The panel determined that Ms 2 had assisted it to the best of her knowledge and belief.

The panel found Ms 3 to be a credible, reliable and straightforward witness. It noted that she was only able to give limited evidence to it, as she was only able to comment on the events that involved Kingfisher. Nonetheless, the panel considered her to have been clear and succinct in giving her oral evidence, and it did not consider her to have embellished her evidence in any way. Ms 3 was fair and balanced as she accepted when she was unable to recollect certain events. The panel determined that Ms 3 had assisted it to the best of her knowledge and belief.

The panel found Ms 4 to be a credible, reliable and straightforward witness. It noted that along with Mr 1, Ms 4 had interviewed Miss Williams in determining whether she was a suitable applicant for a nursing post at Olive Tree. The panel considered Ms 4 to have been clear about the day-to-day running of Olive Tree, and it considered her to have been honest in what she was able to recollect. Ms 4 was fair and balanced as she accepted when she was unable to remember certain events, and she did attempt to embellish her evidence. The panel considered her to have been consistent with her NMC witness statement, and noted that she was a registered nurse of some 30 years' experience, with approximately nine years' experience of working in a managerial role. She was able to articulate to the panel what her concerns were, and what she would expect from applicants who were applying for a role at Olive Tree. The panel determined that Ms 4 had assisted it to the best of her knowledge and belief.

The panel found Mr 5 to be a clear, honest, and reliable witness. It considered him to be knowledgeable around the medications process in place at Olive Tree, and noted that he was also able to give his own personal opinion on what it was like being working for that establishment as a registered nurse back in 2018. The panel was of the view that Mr 5 did not attempt to embellish his evidence in any way, and it did not consider him to have borne any ill-will to Miss Williams. Mr 5 was fair and balanced during his evidence, as he accepted when he was unable to recollect certain events due to the lapse in time. The panel determined that Mr 5 had assisted it to the best of his knowledge and belief.

The panel then went on to consider each of the charges and made the following findings:

Charge 1

1. *Whilst employed at 'Olive Tree House', on 3 June 2018 administered insulin to Resident 1 otherwise than in accordance with his prescription.*

This charge is found proved.

In reaching this decision, the panel had regard to the evidence of Ms 1, Ms 2 and Miss Williams.

The panel took account of Mr 1's NMC witness statement, in which he had stated:

"The first incident occurred on the 3 June 2018 involving Resident 1. Resident 1 was insulin dependent, was mentally fit but not physically well. Therefore, he was unable to administer insulin on his own and needed help. On the day in question, Wendi may have incorrectly administered insulin to Resident 1 as his t-shirt was wet after administration. Wendi then took it upon herself to give him an additional dose of insulin at lunchtime...As is shown on the MAR charts, administering an extra dose of insulin is contrary to Resident 1's MAR sheet instruction which was once per day.

Resident 1 was anxious that night that he had been given insulin twice when the instructions clearly state that he is to have insulin once a day. He was a pharmacist and so he understood the implications of being given too much insulin. Resident 1 was extremely distressed and asked for his blood sugar to be monitored. To the best of my knowledge, Wendi did not do this. It is not documented in the nursing notes or anywhere else. There is no evidence that she monitored his blood sugar levels. Resident 1 then informed [Ms 2], a registered Nurse, who took Resident 1's blood sugar. She found that it was slightly higher than usual from what I recall.

The next day, Monday 4 June at around lunchtime, Louise reported this incident to me. Wendi did not inform me about this and she did not ask for my help or opinion.

The issue with Wendi's actions is that she took it upon herself to give additional insulin...

I am aware that Wendi said she gave the required dosage to Resident 1, however this is not correct as Resident 1 told me himself about being given an extra dosage and also told [Ms 2]. I am quite sure of this as Resident 1 had full capacity before he passed and used to be a pharmacist so he knew what he was talking about. This incident is not on his MAR chart as Wendi did not record any of this. Wendi told [Ms 2] herself that Wendi had given an extra dosage of insulin at lunchtime to Resident 1...

I am aware that Wendi said Resident 1's t-shirt was probably wet due to using a Peg and therefore due to a feed, however Resident 1 told me himself that his t-shirt was wet due being given an extra dosage of insulin. Resident 1 also communicated this to [Ms 2].

When Ms 4 and I spoke to Wendi about the incident, Wendi said that she was sorry and apologised. However, we noticed that she did not comprehend the seriousness of the situation. There was a lack of insight which was frightening. Giving an extra dose of insulin can cause someone to go into hypoglycaemia – low glucose levels in the blood – which in the worse of circumstances can result in the individual going into a coma..."[sic].

This was supported by Ms 2's NMC witness statement, as she stated:

"On 3 June 2018, I was on night shift. Wendi handed over to me that evening. One of the Residents, Resident 1, seemed very anxious. He was ringing his call bell – a

bell the residents used to call for help. Resident 1 was able to communicate via writing on a white board. He communicated the following on his whiteboard 'please can you check my blood sugar as I wasn't given all of my insulin this morning'. He appeared anxious as he wrote he was given an extra four dosage at lunchtime.

I asked him what he meant by this, he said his t-shirt was wet and he wasn't given all of his prescribed dose in the morning. When I told him what his blood sugar was he said-would it be worth giving me an extra few units now. I said I cannot do that as it's not prescribed. He then wrote on his board but the nurse today gave me an extra 4 units at lunch time...

I then did his reading and it was 16.6. This was a higher reading than usual. However, I informed Resident 1 that he should not worry. That a reading like this could be normal for him, but as we only check his blood sugar levels in the morning we have nothing to compare it too. I did not call the out of hours GP as I did not have concerns...I also told Resident 1 that I could not give him another dose without it being prescribed. I was able to reassure Resident 1 and checked his blood sugar levels throughout the night..."[sic].

The panel noted from Resident 1's MAR chart and that this confirmed that insulin was due to be administered to him once a day. It was of the view that had any further doses of insulin been administered to Resident 1 beyond that, then this would have been otherwise than in accordance with his prescription.

The panel was aware that as Resident 1 has now passed away, he was not able to attend this hearing to give oral evidence to the panel. Nonetheless, Mr 1 and Ms 2 were able to attend to give a first-hand account of what Resident 1 had told them and the panel was able to test this. Both Mr 1 and Ms 2 were able to articulate to the panel that Resident 1 had genuine concerns regarding his health and wellbeing after having had an extra four units of insulin administered to him at lunchtime, and both stated that due to his previous occupation, that being a Pharmacist, 'alarm bells' were ringing for Resident 1.

The panel noted specifically from Ms 2's oral evidence that she appeared to have a good recollection of Resident 1, and that she also knew how to engage with him. Ms 2 was able to give a high level of detail around Resident 1's communication with her through the use of his white board, as he was comfortable using this.

The panel reminded itself that it had found both Mr 1 and Ms 2's oral evidence to be reliable and compelling. Both witnesses had attested to Resident 1 having full capacity, despite being physically unwell.

The panel considered Resident 1 to have provided a consistent account to both witnesses, firstly, to Ms 2 on the day of the incident itself, and secondly, to Mr 1, the very next day. Ms 2 also made contemporaneous records of the incident shortly after it having been reported to them by Resident 1.

The panel noted from Miss Williams' written representations that she denies administering insulin to Resident 1 in any other way than as was prescribed. However, the panel also took into account Miss Williams' response to Mr 1, when she was interviewed by him on 12 June 2018, in relation to this incident. In this interview, Miss Williams appeared to confirm Resident 1's account, as it is recorded that "*may not have administered [Resident 1] his initial dosage of insulin incorrectly; she then had given him another dose a lunchtime*". The panel noted that this interview took place nine days after the incident so it is a relatively contemporaneous record. Miss Williams was also confronted with these concerns, and did not have time to prepare a response.

Therefore, in taking account of the above, the panel found charge 1 proved on the balance of probabilities.

Charge 2a and b

2. *Following the actions set out in Charge 1 above you did not:*

- a) *Record/report the error; and/or*
- b) *Ensure that Resident 1 was reassured that his health had not been affected by the error.*

These charges are found proved.

In reaching this decision, the panel had regard to the evidence of Mr 1, Ms 2 and Miss Williams.

The panel took account of Mr 1's NMC witness statement, in which he had stated:

"Wendi failed to inform the GP or seek advice from the other nurses on shift about the action she was proposing to take. She did not recognise that Resident 1 was distressed or even comply with his request to check his blood sugar levels. Wendi also failed to tell [Ms 2] at handover that she administered a second dose of insulin. Lastly, Wendi did not inform me, as the acting manager about the incident..."

The panel took account of Ms 2's NMC witness statement, in which she had stated:

"None of this was recorded by Wendi or told me at handover. I reported it to my manager the next day and wrote it in Resident 1's care log..."

The panel had sight of Resident 1's Care Log. However, it noted that there did not appear to be an entry from Miss Williams to indicate that she had administered an extra four units of insulin to Resident 1 at lunchtime, nor had she documented what action she took in reassuring Resident 1 that his health and wellbeing had not been affected by this error.

The panel was of the view that due to the seriousness of the error made, it would have been entirely appropriate for Miss Williams to have recorded the error in Resident 1's Care

Log, as well as escalate the error to a senior member of staff. The panel considered Resident 1 to have been exposed to a significant risk of harm in Miss Williams administering an extra four units of insulin, which was then compounded by her further inaction.

Ms 2 had told the panel during her oral evidence that Miss Williams should have telephoned 111 and/or the General Practitioner (“GP”) in order to seek further advice in respect of what care should be delivered to Resident 1, and the panel agreed with this position.

The panel also noted that Miss Williams had the opportunity to explain this incident to Ms 2 during handover, as Ms 2 took over the night shift directly from Miss Williams. However, Ms 2 told the panel during her oral evidence that Miss Williams did not handover anything to her about there being any issues regarding Resident 1’s insulin medication.

Furthermore, the panel noted that when Ms 2 came on shift, Resident 1 seemed very anxious and was ringing the bell to call for help. The panel received evidence to suggest that as Resident 1 was a Pharmacist, he was aware of the dangers of having been administered too much insulin. He was therefore concerned about what had happened, and he raised his concerns with Ms 2 in respect of this medication.

In assessing Resident 1’s behaviour, Ms 2 formed the impression that Miss Williams had not sought to allay his concerns in having had an additional four units of insulin administered to him.

The panel noted that there had been no entry in Resident 1’s Care Log of the care that Miss Williams had provided to Resident 1, having made an error in administering an additional four units of insulin. It was therefore satisfied that no action had been taken by Miss Williams in this respect.

The panel reminded itself that it had found Ms 2's evidence to be reliable and compelling, in that she was able to explain in some detail to the panel, the account that was provided to her by Resident 1. She also explained the steps she then took to ensure that this concern was recorded/escalated accordingly, as well as the care she went on to deliver to Resident 1 by taking his blood sugar levels at his request, to reassure him regarding his health and wellbeing.

Furthermore, the panel also had sight of noted from Miss Williams' interview with Mr 1 on 12 December 2018, in which it is recorded:

"...Kevin then asked why Wendi hadn't documented anywhere that this happened? There was nothing recorded anywhere. Wendi said sorry. Kevin asked her if she was aware of her responsibility as a nurse to ensure that things were documented, Wendi failed to reply."

In taking account of the above, the panel was satisfied that, on the balance of probabilities, there was sufficient evidence before it to find charges 2a and 2b proved.

Charge 3

3. *Whilst employed at 'Olive Tree House', on 11 June 2018 failed to give prescribed medication to the Residents listed in Schedule 1.*

SCHEDULE 1

- a) *Memantine Tablets for Resident 2*
- b) *Eye drops and/or docusate sodium for Resident 3*
- c) *Medication for Resident 4*
- d) *Ibuprofen gel for Resident 5*

This charge is found proved in its entirety.

In reaching this decision, the panel had regard to the evidence of Mr 1, Ms 2, Mr 5 and Miss Williams.

The panel took account of Mr 1's NMC witness statement, in which he had stated:

"On 11 June 2018, Wendi was working a morning shift and was responsible for the administration of medication on the floor to 16 residents. Wendi had signed on the MAR charts that she had given medication to various residents but none of the medication had been opened.

There was no left over medication because the night before, on 10 June, there was a changeover of medication. This means that all the racks were emptied of medication and any excess stock would have been destroyed or carried over. However, as you can see on all the MAR charts for the residents, there was no stock carried over as indicated by the zero. This is usually the case as we always get enough medication to last us before changeover. Ms 6, another registered nurse, was the one who did the changeover of medication on the night of 10 June or Mr 5...

I am aware that the destroyed medication form does not have names of the residents in question, this means that there was no medication left on 10/06/2018 for anyone to destroy.

The pharmacy sometimes do not send all of the medication however this doesn't happen often and I am sure this was not the case on 10/06/2018."[sic].

This was supported by Ms 2's NMC witness statement, in which she had stated:

“The process at the Home is that we receive new sets of medication every month which is just as the old medication is running out. The changeover of medication happens on a Sunday night every 4 weeks and Monday is the day new medication has to be used in the morning shift which is between 8am and 2pm.

We don't normally carry forward medication apart from paracetamol which comes in boxes and we can have some left to carry over. We tend not to carry forward medication as most of the time medication is not left but this can happen sometimes. At the Home it is best practice to get rid of old medication for the pharmacy to collect the waste bin.

When destroying or returning medication to the pharmacy, we complete a medication destruction book which requires two nurses to sign and place the medication in the bin. Two copies of this form is kept on carbonless copy paper. Every now again the pharmacist does an audit, where they check the book, check that we are not destroying too many medication and ordering too many.

I note from the 'Destroyed' medication form...that none of the resident's in question for this investigation is written down for 10/06/2018. As old medication is always put in the bin for the pharmacy to collect, there is a possibility that it wasn't filled in the form which can happen at the Home. This is more likely to have happened rather than old medication being left in the trolley.

The person changing over old medication and especially with eye drops and bottles wold have discarded it, this is the strict process at the Home.”[sic].

The panel also took account of Mr 5's NMC witness statement, in which he had stated:

“[Olive Tree] order medication every 28 days, so if you have for example 200ml of medication left, then you only order another 300ml for the 28 days to prevent over ordering.

As Sunday night of every month is when medication is changed over I can confirm from the MAR charts in question that where it states 7 June 2018 under each medication, this is the date the medication was received from the pharmacy. This indicates that the following Monday morning is when the new medication cycle is to be used. The Home would receive them on a Wednesday or Thursday to be used the following Monday. The time gap is in case the pharmacy have not sent all of the medication then the Home can chase for the remainder before the Monday cycle.

The morning shift start at 8am on a Monday. The night shift on Sunday starts at 8pm-8am so they will not be using the new medication on their night shift. The Monday morning staff would be using the new medication. On the MAR charts in question the new medication would have been used in the morning of 11 June 2018”[sic].

In establishing whether there was a ‘failure’ in this case, the panel first considered whether there was a duty imposed on Miss Williams to have administered the medication listed in Schedule 1 to the residents at Olive Tree on 11 June 2018. As Miss Williams was the registered nurse on shift at this time, the panel was in no doubt that she would have been responsible for ensuring that Resident 2, Resident 3, Resident 4 and Resident 5 all received their medication when it was due.

The panel noted that Mr 1 had decided to do a medication audit on 12 June 2018 and, upon inspection, he found several medications, including those for Resident 2, Resident 3 and Resident 5, which had not been opened. This led him to believe that the medications listed in Schedule 1 had not been administered to the residents identified above on the Monday morning medication round on 11 June 2018, undertaken by Miss Williams. The panel noted that Mr 1 took photographs of the medication referred to in Schedule 1 that was unopened and belonging to the residents in question.

The panel considered all of the NMC witnesses that attended to give oral evidence to have been consistent in respect of the medications process at Olive Tree. It noted that old stock would be discarded at the end of the medication cycle and new stock would then be put on the medication trolley on the Sunday night, ready for the Monday morning shift; the next medication cycle. This process happened once a month

The panel noted that for Resident 2, Resident 3, Resident 4 and Resident 5, there was a 'zero' entered in the column on each of the MAR charts to indicate that no more of this medication was to be retained for the next medication cycle. This told the panel that there was no old stock left in relation to Resident 2, Resident 3, Resident 4 and Resident 5 that could be administered to them. Whilst the medication log itself does not show that the old medication was destroyed, the panel was satisfied from the compelling evidence of the NMC witnesses that the medication changeover did happen on Sunday, 10 June 2018.

Miss Williams had stated in her written representations that she did administer all the relevant medications as she had both old and new medication on the trolley at the point that she did her morning medication round on 11 June 2018. Specifically, in respect of Resident 3's docusate sodium, Miss Williams attested to using the last of the old stock up, so that she did not have to open the new medication. However, when this was put to Mr 1, Ms 2 and Mr 5 during their oral evidence, they all denied that this would have happened. In particular, Mr 5 had explained the practical difficulties in doing this to the panel, as the size of the medication trolley would have made it very difficult to have both the old and new stock on it.

The panel accepted the evidence in regards of Resident 4 which was less clear, nevertheless, the panel found in light of the finding above that it was more likely than not in these circumstances that Ms Williams had not provided the medication to Resident 4.

The panel considered the medication process in place at Olive Tree would have prevented old and new medication from mixing. The panel noted that the NMC witnesses had all stated that the medication would have been thrown away at the point of changeover,

regardless of how full they were, as the point of this was to prevent out of date medication from being administered to residents. For example, the panel received evidence to suggest that Resident 3's eye drops had a 28 day expiration date, which is why it was important to ensure that old stock had been cleared from the trolley when performing a medication round at the start of the new medication cycle.

The panel preferred the evidence of the NMC witnesses who all gave compelling evidence which was consistent with their NMC witness statements. The panel considered Miss Williams' account to be implausible, given that it was contrary to the procedure in place at Olive Tree. Miss Williams had stated that the medication trolley in place at Olive Tree was chaotic, but the panel disagreed. It was of the view that at the start of the new medication cycle, when the new stock had been put on the trolley, this would have been the moment that everything was clear and ready to be used. This was confirmed by Ms 2 in her oral evidence.

In having regard to the above, the panel was satisfied that, on the balance of probabilities, it was more likely than not that Miss Williams had not administered the medication listed in Schedule 1 to Resident 2, Resident 3, Resident 4 and Resident 5.

Therefore, the panel found charge 3 proved.

Charge 4

4. *On 11 June 2018 you signed MAR Charts for Residents listed in Schedule 1 to indicate that you had administered medication when you had not done so.*

SCHEDULE 1

- a) *Memantine Tablets for Resident 2*
- b) *Eye drops and/or docusate sodium for Resident 3*

- c) Medication for Resident 4
- d) Ibuprofen gel for Resident 5

This charge is found proved in its entirety.

In reaching this decision, the panel had regard to the evidence of Mr 1 and Miss Williams.

The panel took account of Mr 1's NMC witness statement, in which he had stated:

"I became aware of the inaccuracies on the MAR chart because I was on the morning shift on 12 June 2018. I decided to check the medication of the residents to see if things were signed properly. That was when I first noticed that there was unopened medication that had been signed as given..."

Wendi had signed on the MAR charts that she had given medication to various residents but none of the medication had been opened".

The panel had sight of the MAR charts and considered there to be an entry in the requisite column to indicate that medication listed in Schedule 1 had been administered to Resident 2, Resident 3, Resident 4 and Resident 5. It noted that Miss Williams herself does not dispute that she signed the MAR charts, as she says that she signed them because she had administered the medication.

However, in considering its findings in respect of charge 3, the panel was satisfied that Miss Williams had not administered any of the medication listed in Schedule 1 to any of the aforementioned residents.

Therefore, it followed on that the panel found charge 4 proved.

Charge 5

5. *Your actions at Charge 4 above were dishonest as you deliberately created a medication administration record you knew to be false because you knew you had not given the prescribed medication.*

This charge is found proved.

In reaching this decision, the panel took account of the evidence of Mr 1 and Miss Williams.

It had regard to the case of *Ivey v Genting Casinos Ltd t/a Crockfords [2017] UKSC 67* in determining whether Miss Williams had been dishonest in her actions, as outlined in charge 4. In particular, the panel noted in paragraph 74:

“When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

The panel took account of its findings in charge 4, and noted that it had found Miss Williams to have signed MAR charts indicating that medication had been administered to the residents referred to in Schedule 1, when it had not been. It also noted its findings in respect of charge 3, that Miss Williams had failed to give prescribed medication to Resident 2, Resident 3, Resident 4 and Resident 5.

The panel considered there to be a need to keep accurate information on a MAR chart so continuity of care can be maintained, as it is an important medical document which is legally binding.

The panel was of the view that in signing a MAR chart, ordinary and decent people would expect that to mean that the medication was administered to the resident in question. If the medication is not administered for any reason, then this would also be documented with an explanation as to why it had not been.

As the panel has found Miss Williams to have failed to administer the medication to residents, as outlined in Schedule 1, the panel considered her actions in signing the MAR charts to have demonstrated an awareness that what she had done was wrong, and that she knew that she should have done something else.

The new medication at Olive Tree had been prepared on Sunday, 10 June 2018, the day before the new medication cycle, and Mr 1 noticed on Tuesday, 12 June 2018, during his medication audit, that the medication that was due to be administered on Monday, 11 June 2018 by Miss Williams had not been as it was still unopened. The panel reminded itself that it had found Miss Williams' account to be implausible, given that it was contrary to the procedure in place at Olive Tree, and was completely at odds to the evidence of the NMC witnesses.

In taking account of the above, the panel determined that Miss Williams knew she had not administered the medication to the residents referred to in Schedule 1, yet she had intended to mislead her colleagues into believing that she had by signing the MAR charts. To characterise Miss Williams' actions as anything other than dishonest would be inconsistent with the evidence presented.

Therefore, the panel found charge 5 proved.

Charge 6

6. *Did not declare the following during the recruitment process for your role at 'Olive Tree House':*

a) on your CV, that you had been employed at 'Kingfisher House';

and/or

b) in interview, that there were concerns raised about your professional performance at Kingfisher House that meant you had not yet successfully passed your probation.

These charges are found proved

In reaching this decision, the panel took account of the evidence of Mr 1, Ms 3, Ms 4 and Miss Williams.

The panel took account of Mr 1's NMC witness statement, in which he had stated:

"We received [Miss Williams'] CV from the agency stating she was available to work in the same position as before. It was also after she was dismissed [from Olive Tree] that I spoke to a friend of mine who is the manager of Kingfisher Lodge. She was telling me that she had employed a Wendi who also failed her probation. When I dug a little deeper, we realised it was the same Wendi. Wendi had not disclosed this to me and it was not on her CV.

I did interview Wendi where she mentioned she worked for an agency, she did not mention which Home she worked for through the agency. She said she was looking for a full time job as opposed to agency work."

The panel took account of Ms 3's NMC witness statement, in which she had stated:

“Due to her large amount of absence, and myself being new in post at [Kingfisher], I met with her on 29 March 2018 for a probation review. She was aware her attendance was poor and the impact it had on the team but she said she was feeling more confident and I assured her of my support highlighting the need for her to take regular breaks. We agreed her first shift not shadowing would be 29 March 2018...

Wendi's attendance did not improve which was a major concern so additional nurses were rostered in case of her being absent. This naturally was not sustainable so on 27 April 18 when she arrived late for a shift her contract was terminated. Despite extending her probationary period and providing additional support and numerous shadow shifts she failed to reach the standards expected by [Kingfisher].”

The panel took account of Ms 4's NMC witness statement, in which she had stated:

“I knew Wendi from when she had her interview with myself and my deputy, Mr 1, at [Olive Tree] and then she was subsequently offered a post at the home.

From what I remember of the interview she had been referred to us by an agency and we questioned her about her sabbatical. She explained it was because she needed to support her parents and that she had previously had a job at Barchester but didn't find them very supportive. I sympathised with that as I had also worked at Barchester previously and had had a similar experience. Overall at the interview Wendi came across as very credible and had the knowledge of someone who had been in a similar role for a long time.

Wendi did not mention any other employers, except for those on her application form. As a general rule, we would go on the basis of someone's application form

and wouldn't assume there would be other employers who had not been mentioned.

After the interview we offered her the post through the agency...

After Wendi was dismissed by us, we received her CV again from another agency (willingare.co.uk) however we were not included on her references or her CV..."[sic].

The panel had sight of Miss Williams' CV and noticed that at the point that this was provided to Olive Tree, her CV had implied that she had been on sabbatical from January 2016 until the present day.

However, Miss Williams' accepts in her written representations that her CV was not up to date in this respect, but she states that she had informed both Mr 1 and Ms 4 of her recent employment, including at Kingfisher during the interview, but was informed by them that she did not need to update her CV to include this now that she had told them.

This assertion put forward by Miss Williams was strongly rejected by both Mr 1 and Ms 4 during their oral evidence, as they stressed the importance of having a candidate's full employment history in order to conduct the necessary pre-employment checks. Mr 1 and Ms 4 told the panel that they would definitely remember Miss Williams informing them that she had worked at Kingfisher had she done so, as it would have rung '*alarm bells*' for them, knowing that they had connections with people that currently worked there.

The panel reminded itself that it had found both Mr 1 and Ms 4 to have been reliable and compelling witnesses when giving their oral evidence. It noted that whilst Ms 4 confirmed that Miss Williams did mention having previously worked for Barchester Health Care Group, and that she sympathised with some of the difficulties Miss Williams had experienced, she was very clear on there having been no mention of any previous employment at Kingfisher.

The panel was also satisfied that Miss Williams had not provided any further information in respect of this. It considered the evidence of Mr 1 and Ms 4 to be supported by the absence of Kingfisher having been mentioned on Miss Williams' CV, along with the evidence presented on Miss Williams' application form which she submitted for the purposes of the recruitment process at Olive Tree. In the application form, the panel noted that there are some fields relating to previous employment which appear to have been struck through by Miss Williams. There are also entries made by Miss Williams stating 'see CV', which implies that Miss Williams was intending to rely on a document which she is now claiming to be out of date.

Miss Williams also had the opportunity to inform Olive Tree of her previous employment at Kingfisher after having been told that she was successful at interview, and after she had accepted their job offer. However, Miss Williams did not do this.

The panel noted that Ms 3 had told the panel that Miss Williams was aware that her attendance record at Kingfisher was poor. It considered Miss Williams to have been aware that this was something that had the potential to impact upon her ability to obtain future employment. Ms 4 had stated during her oral evidence that had Miss Williams informed her of her previous employment at Kingfisher, and outlined her reasons for leaving, this would not automatically have resulted in her application being rejected. Ms 4 had said that further enquiries would have been undertaken to establish whether reasonable adjustments could have been made to accommodate Miss Williams' suitability for the role.

The panel was of the view that in not mentioning her most recent employment at Kingfisher, or that her probation period at that place of employment had been extended due to her professional performance. Miss Williams had attempted to conceal the truth from Olive Tree with the intention of gaining new employment from them.

Therefore, the panel found charges 6a and 6b proved.

Charge 7

7. *Your conduct at Charge 6a and/or Charge 6b above demonstrated a lack of integrity on your behalf as you knew that disclosing the details of your employment at Kingfisher House could reflect negatively on your application for employment at Olive Tree House.*

This charge is found proved.

In reaching this decision, the panel took account of the evidence of Mr 1, Ms 3, Ms 4 and Miss Williams.

The panel took account of the case of *Wingate and Evans v Solicitors Regulatory Authority [2018] EWCA Civ 366*, which is the current leading authority on the meaning of 'lack of integrity'.

The panel had regard to its findings in charge 6, specifically that Miss Williams would have been aware that, had she provided her most recent employment history to Mr 1 and Ms 4, this could have had the potential to disadvantage the job application she had submitted at Olive Tree.

The panel had found Miss Williams to have deliberately withheld information from Mr 1 and Ms 4 by stating in her application form that her CV would contain her most recent up to date employment history, when she was aware that it did not. Miss Williams did not then tell Mr 1 or Ms 4 about her most recent employment at Kingfisher during her interview, nor did she inform them subsequently, after having been given the role of a registered nurse at Olive Tree.

The panel considered Miss Williams to have attempted to create a misleading impression, which she had hoped that Mr 1 and Ms 4 would rely. Because of her deliberate omission,

the panel was satisfied that Miss Williams' actions were cognisant of a failure to adhere to the ethical standards of the nursing profession and amounted to a lack of integrity.

Therefore, the panel found charge 7 proved.

Resuming Hearing Monday, 11 January 2021 – Wednesday, 13 January 2021

Decision and reasons on service of Notice of Hearing

On the resuming date, Monday 11 January 2020 at 10am, the panel noted that Miss Williams was not in attendance.

Ms Alabaster informed the panel that the Notice of Hearing letter had been sent to Miss Williams' e-mail address on 2 December 2020.

The panel took into account that the Notice of Hearing provided details of the resuming hearing, including the time and date of the hearing and the fact that it would be a virtual hearing, held remotely. The Notice contained, amongst other things, information about Miss Williams' right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence. It also contained a link for Miss William's to participate in the hearing.

Ms Alabaster, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Williams has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Miss Williams

The panel next considered whether it should proceed in the absence of Miss Williams. It had regard to Rule 21 and heard the submissions of Ms Alabaster who invited the panel to continue in the absence of Miss Williams.

Ms Alabaster submitted that whilst the panel is making an independent decision on whether to proceed in Miss Williams' absence today it should take into account the events of the last hearing. She submitted that Miss Williams' behaviour is in keeping with the previous occasions and that there is no evidence before the panel to conclude today's situation is different than last time. She submitted that there is no evidence that adjourning the hearing would secure Miss Williams' attendance on this occasion.

Ms Alabaster referred the panel to e-mail communication between the NMC Case Officer and Miss Williams. In reply to an email sent by the NMC Case Officer dated 17 December, which states:

'Thank you for you I [sic] email,

I can confirm I received notification of the dates for the substantive hearing on the 2nd of December 2020, and I will advise you of the same.

I'm very disappointed the dates fall on a Tuesday and Wednesday yet again despite repeatedly advising the panel I work on these days and the difficulty I have trying to get time off on the stated days.... due to me only having a zero hours.

To be honest I don't know what to say or do anymore....'

In an email dated 4 January 2021, the NMC case officer pointed out to Miss Williams that she appreciates Miss Williams *'may be working on Tuesday and Wednesday. However, the resuming hearing starts on Monday 11 January 2021'* and asked her to

'confirm if you plan to attend the hearing on Monday 11 January 2021? You have the opportunity to discuss your case and attending the hearing with the panel if you attend the hearing on Monday.'

Miss Williams replied to this email on 5 January 2021 stating:

'As you are aware I work on Sunday night, so I will be available from 12 midday as my shift doesn't finish until 11.30am, this will allow me to return home...' [sic]

The NMC case officer replied again on 5 January 2021 stating:

'If you're available to attend the hearing from 12:00 onwards on Monday 11 January, please let me know of a time you would like to carry out a Go To Meeting test this week, to ensure you can join the hearing by video-link.'

Ms Alabaster submitted that the NMC had not received any further communication from Miss Williams after this. She submitted that Miss Williams' participating in a GoToMeeting test would have been a good indicator on her intentions to attend today's hearing, however, she had not taken this opportunity. She submitted that Miss Williams is aware of the hearing and that she may be available later on today. Ms Alabaster acknowledged that Miss Williams stated that she is working under a zero-hour contract, however, it is a registrant's duty to make themselves available for these proceedings and Miss Williams had ample time to make arrangements to be available to be present for today's hearing, allowing her to make submissions on impairment. She submitted that it is a matter for the panel to decide whether to wait until 12pm to determine whether to proceed in absence.

The panel noted an e-mail sent by the Panel Secretary on Friday, 8 January 2020, advising Miss Williams of the log in details of the hearing, noting that she was only available after 12pm asking her to confirm her attendance. It also noted that the Panel Secretary advised that as of 11 January 2020, 10am, there was no reply from Miss Williams to that e-mail.

After the panel heard the advice of the legal assessor Ms Alabaster interjected and stated that she just received a further update from the NMC Case Officer. Miss Williams has sent an email at 8:01 on 11 January 2021 stating:

'I hope to be available anytime after 1.30 - 14.00hrs today, after I finish my night shift. I have sent 3 Reflective Accounts [sic] Forms, I hope you have received them ok.'

Ms Alabaster submitted that the Case Officer, at that point, stated that she had not received any papers, but that she will double check her emails to confirm, additionally, she again offered Miss Williams to test GoToMeeting before joining the hearing.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised *'with the utmost care and caution'* as referred to in the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel agreed to adjourn the hearing until the afternoon, however, decided to proceed in the absence of Miss Williams should she not attend at that time. In reaching this decision, the panel has considered the submissions of Ms Alabaster, all the e-mail communication between Miss Williams' and her NMC Case Officer to date, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Miss Williams;
- Miss Williams has informed the NMC that she has received the Notice of Hearing;
- Miss Williams is not clear in her emails if she intends to attending the hearing;
- Miss Williams had ample notice of the resuming dates of the hearing, giving her the opportunity to arrange her attendance;
- There is no reason to suppose that adjourning would secure her attendance at some future date;

- The charges are serious, including dishonesty and relate to events that occurred as far back as 2018;
- There is a strong public interest in the expeditious disposal of the case, with notable public protection concerns.

The panel instructed the Panel Secretary to send another e-mail to Miss Williams. It was sent on 11 January at 10:52am stating:

'Good morning Miss Williams,

The panel has convened this morning and determined that, in any event, it will resume the hearing at 1.30pm. The panel expects that the documents you mentioned to [the NMC Case Officer] are available at that time.

Please understand that if you are not available at 1.30pm the hearing will proceed regardless.'

Whilst the hearing was adjourned the Panel Secretary received the following reply from Miss Williams at 12:23pm:

'Thank you for you email.

I appreciate its contents and the panels patience.

I have made everyone aware of my availability due to my working hours and that Im on a zero hours contract.

So again I can only apologise for any inconvenience caused to you and the panel, I have been honest and identified the days I am unavailable so I am very sorry, Im not being awkward I just have to commit to my current employer.' [sic]

Ms Alabaster and the panel were made aware of this e-mail shortly after.

The hearing resumed at 1.30pm. The panel noted that Miss Williams was not in attendance.

Ms Alabaster further submitted that in Miss Williams' latest email she acknowledged that the panel expected her to attend and that it will proceed in her absence should she choose not to. She submitted that the panel had reinforced the need for her to submit the documents earlier referred to, however, at 1.30pm these documents had not been received by the NMC Case Officer, nor the Panel Secretary.

Ms Alabaster stated that due to the last e-mail, she was optimistic that Miss Williams would attend, however, Miss Williams has chosen not to. She submitted that Miss Williams knows how to contact her NMC Case Officer and the panel secretary should she have any issues with joining GoToMeeting, however, she had not done so. She submitted that it is unlikely that Miss Williams would attend should the panel decide to adjourn the hearing at this point. She submitted that the NMC has done everything in its power to encourage Miss Williams to attend the hearing, and that there is nothing more that can be done. Ms Alabaster submitted that it is a matter for the panel to decide if the hearing should be adjourned in these circumstances.

The panel determined to proceed in the absence of Miss Williams. It reminded itself of its reasoning earlier in the morning. It noted that Miss Williams', did not join the hearing at 1.30pm, nor shortly after. It also noted that, despite being urgently prompted, Miss Williams has not provided the NMC nor the panel with the documentation she mentioned. The panel therefore concluded that adjourning the hearing further would not secure her attendance. In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Miss Williams.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Miss Williams' fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Miss Williams' fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct and impairment

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) in making its decision.

Ms Alabaster provided the panel with written submissions with regards to misconduct and impairment. The panel decided it would be fair and appropriate in the circumstances of the hearing to send Miss Williams the submissions prepared by Ms Alabaster.

In her written submissions Ms Alabaster invited the panel to take the view that the facts found proved amount to misconduct. She identified the specific, relevant standards where Miss Williams' actions amounted to misconduct.

She then moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Meadows & the General Medical Council* [2006] EWCA Civ 1390 and *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Ms Alabaster gave specific examples of how Miss Williams' clinical failings put patients at risk. She submitted that Miss Williams omitting information about an employer where her suitability for a role had been called into question during recruitment for a new role, in the hope that her appointment will be more likely or favourable, indirectly placed patients at risk of harm. She submitted that any repetition of such misconduct will have the potential to put patients at unwarranted risk of harm in the future.

Ms Alabaster submitted that members of the public would likely be concerned should Miss Williams be allowed to practice unrestricted and any repetition of the misconduct identified would bring the profession into disrepute.

Ms Alabaster submitted that Miss Williams has breached and/or is liable in the future to breach fundamental tenets of the medical profession by unsafe administration of medication, being dishonest in her record keeping and employment history, and lacking integrity. She submitted that these are vital and basic areas of nursing and that any

repetition of Miss Williams' failings have the potential to breach fundamental tenets of the profession

Ms Alabaster submitted that multiple occasions of dishonest record keeping associated with clinical practice is of the gravest nature and invited the panel to assess any future risk of repetition regarding dishonesty in light of all they know about Miss Williams.

Ms Alabaster submitted that the medication administration and management errors, failure to escalate for advice after an error/observe the duty of candour and the record keeping errors are imminently capable of remediation. However, she submitted that Miss Williams has not provided the panel with any documentation indicating that she acknowledges that her practice is in need of improvement or that she would be willing to re-train or address the identified deficiencies.

Ms Alabaster submitted that the dishonesty found proved in relation to record keeping could be characterised as attitudinal and could be considered as a wilful disregard for patient safety. Furthermore, she submitted that the conduct in charge 7, albeit not directly relating to Miss Williams clinical practice, was associated with her conduct in her professional life and is also indicative of an underlying attitudinal concerns. Ms Alabaster submitted that it is less easy for Miss Williams to demonstrate remediation of attitudinal concerns as it cannot be done tangibly in the same way as the clinical concerns found proved through objective re-training and appraisal.

Ms Alabaster submitted that Miss Williams has not provided the panel with any evidence that she has addressed the areas of regulatory concern since the incidents occurred in June 2018. She submitted that whilst Miss Williams does not accept that the fact found proved occurred it is still possible for her to demonstrate that she has addressed the objective areas of concern. However, she submitted that there is no such evidence in the documents provided by Miss Williams, nor is it known if she is currently working in a healthcare setting, albeit it is known that she was not able to work as a registered nurse since 2018 due to an interim suspension order put in place by the NMC.

Ms Alabaster submitted that Miss Williams has not demonstrated sufficient insight or any substantial insight at all into the aspects of dishonesty and lack of integrity, and has therefore not remediated these aspects of her practice.

Ms Alabaster submitted that Miss Williams' fitness to practice is impaired as a result of her misconduct on both public protection and public interest grounds. However, she submitted that it is well within the gift of this Panel in the exercise of its judgment to find impairment on one of the grounds and not the other should it consider that this is appropriate.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

At this point the panel retired to discuss the matters of misconduct and impairment. However, on 12 January 2021 at 9:18 am the Panel Secretary received a further e-mail from Miss Williams containing a '*final statement*' stating:

'Please find attached a statement for the panel.

I'm am contactable today or tomorrow if required, I would just need a time slot so I can make myself available. If I'm needed.'

The panel decided to reconvene the hearing to hear the NMC's comments on the written submissions and to consider the additional material provided by Miss Williams.

Ms Alabaster submitted that the document provided by Miss Williams is helpful to the panel as it contains evidence of remorse. She acknowledged that there is some helpful information in the document, but submitted that in general it does not greatly affect the submissions made by her on the 11 January 2020.

Ms Alabaster submitted that the statement is more conciliatory towards the panel and allows it to understand Miss Williams' position a little bit more. She submitted that Miss

Williams confirms that that she has not worked as a registered nurse since 2018 and that she thought that this was the end of her career. Ms Alabaster submitted that her submissions on Miss Williams' remediation, in particular with regard to her clinical failings still stand and that the NMC has not changed its position with regard to that.

Ms Alabaster submitted that Miss Williams' submissions are helpful with regard to the attitudinal concerns, remorse and insight. She submitted that in this document Miss Williams explains how difficult and how distressing the matter has been for her and is subsequently showing a greater ability to look back and reflect on the situation than she had previously. Ms Alabaster submitted that although Miss Williams has maintained that she does not accept some of the facts, there are elements and glimpses that she does accept the panel's findings. She submitted that Miss Williams has shown some development of insight, even if the aspect of public interest is lacking. She therefore submitted that this may show that Miss Williams could gain further insight in the future.

Ms Alabaster submitted that the document provides the panel with some help in regard of Miss Williams' future intentions and that the tenure of the document seems to show that she has some kind of desire to return to nursing should she be allowed back. She submitted that this may play a part in any further deliberations the panel may have should it move to the next stage of sanction. However, Ms Alabaster submitted that overall there is not enough information in the document for the panel to be satisfied that there is no risk of repetition and that therefore a finding of impairment is still necessary on the ground of public protection and is also otherwise in the public interest.

The panel heard and accepted the legal assessor's advice.

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that Miss Williams' actions did fall significantly short of the standards expected of a registered nurse, and that her actions amounted to a breach of the Code. Specifically:

1 *Treat people as individuals and uphold their dignity*

To achieve this, you must:

- 1.1 *treat people with kindness, respect and compassion*
- 1.3 *avoid making assumptions and recognise diversity and individual choice*
- 1.4 *make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay*

2 *Listen to people and respond to their preferences and concerns*

To achieve this, you must:

- 2.1 *work in partnership with people to make sure you deliver care effectively*
- 2.2 *recognise and respect the contribution that people can make to their own health and wellbeing*
- 2.3 *encourage and empower people to share in decisions about their treatment and care*
- 2.6 *recognise when people are anxious or in distress and respond compassionately and politely*

3 *Make sure that people's physical, social and psychological needs are assessed and responded to*

To achieve this, you must:

- 3.1 *pay special attention to promoting wellbeing, preventing ill health and meeting the changing health and care needs of people during all life stages*
- 3.3 *act in partnership with those receiving care, helping them to access relevant health and social care, information and support when they need it*

6 Always practise in line with the best available evidence

To achieve this, you must:

- 6.1 *make sure that any information or advice given is evidence based including information relating to using any health and care products or services*
- 6.2 *maintain the knowledge and skills you need for safe and effective practice*

8 Work co-operatively

To achieve this, you must:

- 8.1 *respect the skills, expertise and contributions of your colleagues, referring matters to them when appropriate*
- 8.2 *maintain effective communication with colleagues*
- 8.3 *keep colleagues informed when you are sharing the care of individuals with other health and care professionals and staff*
- 8.5 *work with colleagues to preserve the safety of those receiving care*
- 8.6 *share information to identify and reduce risk*

10 Keep clear and accurate records relevant to your practice

This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records.

To achieve this, you must:

- 10.1 *complete records at the time or as soon as possible after an event, recording if the notes are written some time after the event*
- 10.2 *identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need*
- 10.3 *complete records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements*

13 Recognise and work within the limits of your competence

To achieve this, you must, as appropriate:

- 13.1 *accurately identify, observe and assess signs of normal or worsening physical and mental health in the person receiving care*
- 13.2 *make a timely referral to another practitioner when any action, care or treatment is required*
- 13.3 *ask for help from a suitably qualified and experienced professional to carry out any action or procedure that is beyond the limits of your competence*
- 13.5 *complete the necessary training before carrying out a new role*

14 Be open and candid with all service users about all aspects of care and treatment, including when any mistakes or harm have taken place

To achieve this, you must:

- 14.2 *explain fully and promptly what has happened, including the likely effects, and apologise to the person affected and, where appropriate, their advocate, family or carers*
- 14.3 *document all these events formally and take further action (escalate) if appropriate so they can be dealt with quickly*

18 Advise on, prescribe, supply, dispense or administer medicines within the limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations

To achieve this, you must:

- 18.1 *prescribe, advise on, or provide medicines or treatment, including repeat prescriptions (only if you are suitably qualified) if you have enough knowledge of that person's health and are satisfied that the medicines or treatment serve that person's health needs*
- 18.2 *keep to appropriate guidelines when giving advice on using controlled drugs and recording the prescribing, supply, dispensing or administration of controlled drugs*

18.3 *make sure that the care or treatment you advise on, prescribe, supply, dispense or administer for each person is compatible with any other care or treatment they are receiving, including (where possible) over-the-counter medicines*

19 *Be aware of, and reduce as far as possible, any potential for harm associated with your practice*

To achieve this, you must:

19.1 *take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm and the effect of harm if it takes place*

20 *Uphold the reputation of your profession at all times*

To achieve this, you must:

20.1 *keep to and uphold the standards and values set out in the Code*

20.2 *act with honesty and integrity at all times,*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel agreed with Ms Alabaster's written submissions.

The panel was of the view that Miss Williams made a serious medication error when she acted not according to the prescription of the patient. It determined that there was a failure in the duty of candour by Miss Williams in not taking proper action following the error and not ensuring that the future care of the patient was safe and that they were not anxious. Furthermore, it decided Miss Williams failed to give prescribed medication due to several patients on a morning medication round and signed MAR charts to indicate that the medication had been given when it had not. It concluded that this created a false impression of the care provided and covered up that those patients did not receive the medication they were due. It concluded that the failing directly relating to patient care is a serious falling below the necessary standard expected of a registered nurse.

The panel further considered that Miss Williams' actions found proved in charge 5, 6 and 7 raise questions about her attitude to events she has encountered in her professional life, including her clinical practice. It was of the view that Miss Williams had acted clearly out of self-interest rather than the best interest of patients and that fellow professionals would find this conduct to be deplorable. Consequently, it concluded that Miss Williams's dishonest behaviour falls seriously short of the standard expected of a registered nurse and amounts to misconduct.

The panel therefore found that that jointly and separately the facts found proved did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Miss Williams' fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be

undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel found that all four limbs of Grant were engaged in this case. It finds that patients were put at risk and were caused physical and emotional harm and consequent distress as a result of Miss Williams' misconduct. Miss Williams' misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

Notwithstanding that Miss Williams' final statement was received very late in the day, namely during the panel's deliberations on misconduct and impairment, it found the statement helpful for its deliberations. However, it noted that the three reflective pieces mentioned by Miss Williams to her NMC Case Officer were never received.

The panel noted that Miss Williams' late statement, seemingly prompted by the determination on facts, shows limited insight into her failings. Although it shows some progress from the previous statements provided, it does not consider the impact her actions had on patients. It noted that Miss Williams acknowledged that she should have updated her CV and not relied on an in depth interview, however, it is still not acknowledging the facts as found proved by the panel. The panel was of the view that Miss Williams showed little focused reflection on her failings and concluded that it could therefore not be satisfied that she would not repeat her failings in the future. The panel found that whilst the new statement does address some of the charges and acknowledges wrongdoing in some way, it still deflects from Miss Williams's clinical failings by blaming circumstances and putting blame upon others. The panel concluded that Miss Williams has not satisfactorily demonstrated that she fully accepts her role and responsibilities at the time of these incidents, nor has she demonstrated that she would now act differently in the future to avoid similar failings. Whilst Miss Williams has undertaken some reflection there is a notable lack of recognition of the impact her actions had towards the patients in her care and the distress that was caused by her failings.

The panel further noted that the latest statement provided by Miss Williams, nor any of the previously provided documentation, addresses the two folded dishonesty, the clinical nor the dishonesty relating to her employment history, in any meaningful way. The panel therefore concluded that Miss Williams shows no insight into her dishonest behaviour. It agreed with Ms Alabaster's submissions that this shows underlying attitudinal issues, which have not been satisfactorily addressed or remediated due to the lack of insight.

The panel was satisfied that the misconduct with regard to the clinical failings is capable of remediation. It was of the view that some of the failings identified could be addressed

through re-training, which could be accessed through e-learning or participation in training courses and further study. However, it had nothing before it to conclude that Miss Williams has remediated her practice. The panel noted that Miss Williams stated that she

'would of [sic] commenced and completed any training the NMC would of recommended for me to evidence my good clinical practise, but I haven't done this because I thought I wasn't allowed to have anything to do with any form of nursing care.'

It also noted that Miss Williams has not worked as a registered nurse since 2018.

The panel was therefore of the view that there is a high risk or repetition in this case.

The panel was concerned in particular in light of Miss Williams' latest document where she continued to exhibit an attitude whereby she places responsibility of her failures onto others.

The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel found Miss Williams' conduct fell so far below the standard of what is required of a registered nurse that it determined that a finding of impairment on public interest grounds is required to promote and maintain the public confidence in the profession and to promote and maintain proper professional standards, as well as to maintain public confidence in the NMC as a regulator.

Having regard to all of the above, the panel was satisfied that Miss Williams' fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Miss Williams off the register. The effect of this order is that the NMC register will show that Miss Williams has been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Submissions on sanction

Ms Alabaster informed the panel that in the Notice of Hearing, dated 20 October 2020, the NMC had advised Miss Williams that it would seek the imposition of either a Suspension or a Strike-Off order if it found Miss Williams' fitness to practise currently impaired.

Ms Alabaster outlined the aggravating and mitigating features in this case. She submitted that the panel could see the lack of insight, the pattern of misconduct over a period of time, the fact that Miss Williams' conduct put patients at risk of harm and causing distress to a patient as well as that Miss Williams' failings meant that she was acting outside of the duty of candour as aggravating features of the case. She also submitted that the panel could take the personal circumstances described by Miss Williams as well as her [PRIVATE] described as mitigating features, although it is not clear how and if these issues have affected her when the incidents occurred.

Ms Alabaster referred the panel to the SG and submitted that taking no further action or imposing a caution order would not be sufficient to protect the public or address the public interest in this case. She submitted that the panel identified a number of issues that would

suggest that a conditions of practice order would not be suitable in this case, for example the fact that Miss Williams had no insight into her dishonest behaviour, suggesting attitudinal issues, she has not remediated the clinical issues identified, she has not demonstrated that she understands the impact her actions had on patients, her tendency to place blame on others and the tendency to put her own self-interest over patients safety.

Ms Alabaster referred the panel to the case of *Parkinson v NMC* [2010] EWC 1898 (Admin) and submitted that a nurse who has acted dishonestly will face being removed from the register unless they engage with the proceedings, show the panel remorse, and admit that they acted dishonestly. She acknowledged that the dishonesty found was serious and that the panel found underlying attitudinal issues in this case.

Ms Alabaster moved on to a striking off order. She submitted that such an order should be imposed if the nurse in question's actions are fundamentally incompatible with being on the register. She submitted that the panel found that Miss Williams has shown no insight into her dishonesty, has a lack of understanding on the impact her actions had on patients and put her own self-interest over that of patients and colleagues. She submitted that these could all be considered harmful attitudinal behaviours that could warrant a striking off order. However, she submitted that the panel should consider if these issues could be worked on during a period of suspension to a level where these issues are no longer not compatible with being on the register. Ms Alabaster reminded the panel that Miss Williams has stated she thought her career as a registered nurse was over, which could be the reason for her non-attendance. Ms Alabaster submitted that whilst the issues identified are serious, Miss Williams has not had a chance to remediate her clinical failings as she has not worked as a registered nurse since 2018. She submitted that should the panel think that the issues identified can be addressed, then it should consider a suspension order for a period of 12 months. However, she submitted that if the panel is of the view that the issues identified are not remediable and are incompatible with being on the register, it should impose a striking off order.

Decision and reasons on sanction

Having found Miss Williams' fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Lack of insight into the dishonesty;
- Pattern of misconduct, over a period of months both clinical and professional;
- Put patients at risk of harm, one of whom was caused actual distress;
- A charge of serious dishonesty has been found proved; and
- Put her own interests before the interests of patients and colleagues
- Her overall failures in her duty of care.

The panel also took into account the following mitigating feature:

- Miss Williams has expressed only limited insight into her failures.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Miss Williams' practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour*

was unacceptable and must not happen again.' The panel considered that Miss Williams' misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Miss Williams' registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. It determined that the dishonest misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Miss Williams' registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where the following factor is apparent, no evidence of repetition of behaviour since the incident. In this case Miss Williams has not worked since the time of these incidents.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that Miss Williams is an experienced nurse of more than 20 years. It noted that there were multiple failings and the misconduct took place over a period of time. It reminded itself that it had found that Miss Williams had shown a tendency to blame other for her failings and concluded that this disrupts collaboratively working with colleagues and as part of a team. It was of the view that her overall behaviour raises concerns about her professionalism. The panel was of the view that her behaviour was a significant breach to the fundamental tenets of the profession falling seriously short of the standard expected of a registered nurse.

The panel further noted the case of *Parkinson* which states:

'A nurse who has acted dishonestly, who does not appear before the Panel either personally or by solicitors or counsel to demonstrate remorse, a realisation that the conduct criticised was dishonest, and an undertaking that there will be no repetition, effectively forfeits the small chance of persuading the Panel to adopt a lenient or merciful outcome and to suspend for a period rather than to direct erasure.'

As modified by the guidance set out in the SG '*cases of particular risk to public confidence*'.

The panel noted that Miss Williams, despite a number of communications during the hearing suggesting that she would, she did not in fact appear before the panel at any stage. It further noted all the material received from Miss Williams and concluded that it still had nothing before it that could assure the panel that a period of suspension would result in Miss Williams showing remorse, other than for finding herself in this situation. There was little realisation, if any, that her conduct was dishonest, or reflecting upon her actions would result in the development of meaningful insight that her actions had on the patients, her colleagues and the profession as a whole. It therefore concluded that Miss Williams' behaviour and actions suggest an attitudinal issue, which is fundamentally incompatible with Miss Williams remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*

- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

Miss Williams' actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Miss Williams' actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence placed before it during this case, the panel determined that the only appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Miss Williams' actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Miss Williams' own interest until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

This will be confirmed in writing to Miss Williams.

Submissions on interim order

The panel took account of the submissions made by Ms Alabaster. She submitted that the panel had identified clear risk of repetition of these matters that could harm patients if repeated in the future. She submitted that an interim order is necessary to protect the public for the reasons identified by the panel earlier in their determination until the striking off order comes into effect. She therefore invited the panel to impose an interim suspension order for a period of 18 months to cover the 28 day appeal period and any period of appeal.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to cover the 28 day appeal period and any period of appeal.

If no appeal is made, then the interim suspension order will be replaced by the substantive striking off order 28 days after Miss Williams is sent the decision of this hearing in writing.

That concludes this determination.